

REMARKS/ARGUMENTS

Claims 1-20 were presented for examination and are pending in this application. In an Official Office Action dated January 26, 2007, claims 1-20 were rejected. The Applicant thanks the Examiner for his consideration and addresses the Examiner's comments concerning the claims pending in this application below.

Applicant herein amends claims 1 and 9 and respectfully traverses the Examiner's prior rejections. Claims 6, 15 and 20 are canceled without prejudice and no new claims are presently added. These changes are believed not to introduce new matter, and their entry is respectfully requested. Support for the amendment can be found generally in paragraphs [0028 -0029] of the specification. The claims have been amended to expedite the prosecution and issuance of the application. In making this amendment, the Applicant has not and is not narrowing the scope of the protection to which the Applicant considers the claimed invention to be entitled and does not concede, directly or by implication, that the subject matter of such claims was in fact disclosed or taught by the cited prior art. Rather, the Applicant reserves the right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

Based on the above amendment and the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding rejections and withdraw them.

Rejection of the claims

Claims 1-5, 7-13, and 16-20 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,013,461 by Hellerstein et al. ("Hellerstein"). Claims 6 and 15 were rejected under 35 U.S.C. § 103(a) as

being unpatentable over Hellerstein in view of U.S. Patent Application Publication No. 2003/0163807 by Drake et al. ("Drake"). Finally claims 14 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hellerstein in view of U.S. Patent No. 6,189,142 by Johnston ("Johnston").

Independent claims 1 and 9 have been herein amended to incorporate the limitations found in claims 6 and 15 respectively rendering the rejection under 35 U.S.C. 102(e) moot.

The claims further recite limitations not taught or suggested in either Hellerstein or Drake. Independent claims 9 and 15 each claims a comparison of a software operating parameter with at least one compute element or computer characteristic. Based on this comparison a ranking is produced identifying for each operating parameter the most suitable host of the software. Thereafter the rankings of each comparison between operating parameters and compute elements/computers are again compared based on a weighting of the importance of the operating parameter. The result of this comparison of comparisons produces an overall ranking of suitability for the plurality of computer elements with respect to the software. The Applicant contends these aspects, as claimed in claims 1 and 9 are neither taught or suggested by Hellerstein nor Drake.

As each dependent claim imports the limitations of its underlying independent claim, they too are deemed patentable for at least the same reasons. The rejection of claims 14 and 16 is thus rendered moot in view of the present amendment. Reconsideration of all rejected claims is respectfully requested.

In view of all of the above, the claims are now believed to be allowable and the case in condition for allowance which action is respectfully requested. Should the Examiner be of the opinion that a telephone conference would

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expedite the prosecution of this case, the Examiner is requested to contact Applicant's attorney at the telephone number listed below.

No fee is believed due for this submittal. However, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

Respectfully submitted,

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